

In the High Court of Punjab and Haryana at Chandigarh

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Criminal Appeal No.AS-119 of 2016

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Date of decision:6.9.2016

Enforcement Officer O/o Regional Provident Fund Commissioner

...Appellant

v.

M/s Sethi Rice Mills and another

...Respondents

....

Coram: Hon'ble Mr. Justice Inderjit Singh

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Present: Mr. Sanjay Tangri, Advocate for the appellant.

Mr. Mukand Gupta, Advocate for the respondents.

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Inderjit Singh, J.

This appeal has arisen out of the acceptance of Criminal Misc. No.A-1564-MA of 2014 granting leave to file appeal vide order passed today by this Court.

Learned counsel for the parties agree that the appeal may be heard today itself. I have heard learned counsel for the parties in the appeal.

This criminal appeal has been filed against the impugned order dated 9.9.2013 passed by learned Judicial Magistrate Ist Class, Faridkot, vide which the complaint filed by Enforcement Officer O/o the Regional Provident Fund Commissioner, Employees' Provident Fund Organization, Bathinda (hereinafter referred to as 'the Enforcement Officer') under

paragraphs 38(3) and 76(b) of the EPF Scheme, 1952 read with Section 14 (2) of the Employees' Provident Funds & Miscellaneous Provisions Act, 1952 (hereinafter referred to as 'the EPF Act') has been dismissed in default for want of prosecution and the accused have been acquitted of the allegations levelled against them.

It has been stated in the grounds of appeal that the learned trial Court while passing the order dated 9.9.2013 had grossly erred in law as well as facts in dismissing the complaint of the appellant/complainant for non-prosecution and acquitting the accused for the offences under paragraphs 38(3) and 76(b) of the EPF Scheme read with Section 14(2) of the EPF Act. It has been further stated that while dismissing the complaint for non-prosecution and acquitting the accused, the learned trial Court has failed to appreciate the fact that there is nothing on record to suggest that the complainant earlier also absented from the proceedings much less his conduct lacked bona fide. It has been submitted that the complainant had been appearing before the learned trial Court mostly on each and every date of hearing. The complaint was fixed on 2.8.2013 along with four other complaints, which were pending in the same Court, but on 2.8.2013 when the complainant attended the Court of JMIC, Faridkot in three cases, he was informed that two cases have been transferred to some other Court, but the appellant was not disclosed as to which Court the cases had been transferred. After making inquiries about the two cases that had been transferred on 2.8.2013, the appellant came to know that the complaint in the present case had been transferred to the Court of Shri Satish Kumar,

JMIC, Faridkot for 2.8.2013 and on 2.8.2013 the Court ordered to send intimation to the complainant for 9.9.2013. However, since no intimation was received by the appellant and he could not attend the proceedings in the said complaint on 9.9.2013, the same was dismissed in default vide order dated 9.9.2013. It has been stated that the appellant/complainant had been sincerely and vigorously perusing his complaint against the respondents. Therefore, the impugned order is liable to be quashed/set aside as he (complainant) was unable to attend the Court on that day. It has been further prayed that the complaint of the appellant may be restored to its original number, in the interest of justice.

In this case, notice of motion was issued and the learned counsel for the respondents has put in appearance and contested this appeal.

The complaint was pending before the learned Judicial Magistrate Ist Class, Faridkot and on one date for the non-appearance of the complainant, this complaint filed under the above provisions of the EPF Scheme and EPF Act has been dismissed for want of prosecution vide the impugned order.

The learned counsel for the appellant argued that the appellant was appearing in this complaint case and his absence on one of the dates was not intentional. Neither the appellant-complainant nor his counsel could appear before the trial Court on 9.9.2013 due to the fact that no intimation has been received by the complainant after the transfer of the case from the earlier Court. Learned counsel for the appellant argued that the appellant in these proceedings was regularly appearing in the Court and there was no

mala fide intention for not appearing before the trial Court. A perusal of the record also shows that, in no way, by the absence, the complainant/appellant is to be benefitted in this complaint case nor there is anything on the record to show that there was any mala fide intention on the part of the complainant/appellant for his absence from the proceedings. The complainant/appellant has given the ground in the appeal that the complainant and his counsel could not appear before the Court. There was no necessity to dismiss the complaint vide impugned order on that day. The Court has also not considered the fact that earlier the complainant was appearing in this case regularly. The absence of the complainant on one date in the complaint case is no ground to dismiss the complaint.

In the facts and circumstances of the present case, I find that the impugned order passed by the learned Judicial Magistrate Ist Class, Faridkot, has caused miscarriage of justice. If this order is not set aside, the complainant/appellant will suffer irreparable loss. It is settled law that the rights of the parties should be decided on merit as far as possible. The Court should do substantial justice between the parties and should not go into the technicalities of the law. Where technical consideration and merit or cause of substantial justice are pitted against each other, the cause of merit and substantial justice is to prevail.

Learned counsel for the appellant placed reliance on the judgment of Hon'ble Supreme Court in Mohd. Azeem v. A. Venkatesh and another, (2002) 7 SCC 726, in which it is held that one singular default in appearance on the part of complainant, dismissal of complaint is not proper.

Cause shown by the complainant that he wrongly noted the date was not disbelieved and, therefore, it was a valid ground for restoration of the complaint. I have gone through this judgment, which fully applies to the facts of the present cases.

Learned counsel for the appellant also placed reliance on the judgment of Hon'ble Supreme Court in Aseem Shabanli Merchant v. Brij Mehra and another, (2005) 11 SCC 412 on the same point, where it is held that dismissal of the complaint for non-prosecution challenged to by brother of the complainant whether such orders can be recalled, it was held that having regard to the facts and circumstances, interests of justice required that the order of the Magistrate acquitting the accused for non-prosecution, as affirmed by the High Court, deserved to be recalled so that the complaints could be tried on merits. The Hon'ble Supreme Court further held in this case that there is no hard and fast rule for recalling of such orders.

On the same point, learned counsel for the appellant also placed reliance on the judgments of this Court in Narender Parashar v. Jagbir Singh, 2009 (3) R.C.R. (Cr.) 246; Neh Pal Sharma v. Bijender Singh, 2009 (2) R.C.R. (Cr.) 751 and Purushotam Mantri v. Vinod Tandon alias Hari Nath Tandon, 2009 (1) R.C.R. (Cr.) 442; Om Parkash v. M/s Golden Forest India Ltd., 2008 (4) R.C.R. (Cr.) 445. I have gone through all these judgments, which fully apply to the facts of the present case.

Therefore, from the above, I find merit in this appeal and the same is allowed. The impugned order passed by the learned Judicial

Magistrate Ist Class, Faridkot, dismissing the complaint is set aside.

This complaint is ordered to be restored at the stage from where it was dismissed by the trial Court. The trial Court is directed to proceed further as per law after giving notice to the parties concerned.

The parties are directed to appear before the trial Court on 30.9.2016.

September 6, 2016.

(Inderjit Singh)
Judge

hsp

NOTE:	Whether speaking/reasoned:	Yes
	Whether reportable:	No